September 24, 2020

Charles A. Uhlarik  
U.S. Army Corps of Engineers  
Environmental Analysis Branch Chief  
477 Michigan Avenue  
Detroit, MI 48236-2550

RE: Duluth Vessel Yard Reconstruction and Expansion in St. Louis River Area of Concern - Duluth/Superior Harbor  
St. Louis County, Minnesota  
DRAFT Section 401 Water Quality Certification

Dear Charles A. Uhlarik:

This draft 401 Water Quality Certification (401 Certification) decision is made by the Minnesota Pollution Control Agency (MPCA) under authority of Section 401 of the Clean Water Act, or CWA, (33 USC 1251 et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. chs. 7001.1400-1470, 7050, 7052, and 7053. It relates to the U.S. Army Corps of Engineers – Detroit District’s (USACE) July 7, 2020, date request for 401 Certification to conduct maintenance activities and expand the Duluth Vessel Yard Pier in the St. Louis River Estuary, located at 901 Minnesota Avenue, Duluth, Minnesota 55802.

Applicable Water Quality Standards:
This project lies within the St. Louis River Area of Concern (SLRAOC) and is part of the Duluth-Superior Harbor. This area is classified by the MPCA under Minn. R. 7050.0470 as a Class 2B, 3C, 4A, 4B, and 6 waterbody. These designated uses are protected by the general narrative standards for waters of the state (Minn. R. 7050.0210) and the specific water quality standards for each classification (Minn. R. 7050.0220 through 7050.0226). In addition, the more restrictive water quality standards for the parameters listed in Minn. R. 7052.0100, subp. 5, apply because the SLRAOC is within the Lake Superior Basin.

This area is also identified on the MPCA CWA 303(d) list of impaired waters, meaning it does not currently meet the applicable state water quality standards for the following parameters: concentrations of DDT, dieldrin, PCB and mercury in fish tissue, and PCBs and total mercury in the water column. In addition, the SLRAOC is one of 43 locations throughout the Great Lakes area where certain beneficial uses are listed as impaired as described in the Great Lakes Water Quality Agreement (1987).¹

Project Description:
The USACE issued its draft federal Environmental Assessment for this project and draft Findings of No Significant Impact June 22, 2020.

¹The Great Lakes Water Quality Agreement is a commitment between the United States and Canada to restore and protect the waters of the Great Lakes. The agreement provides a framework for identifying binational priorities and implementing actions that improve water quality.
The purpose of the proposed project is to improve the poor and deteriorating condition of the piers at the Vessel Yard so it can continue to support the USACE’s mission and operations in the region. The proposed project consists of building new mooring bit foundations and seawalls by first installing Steel Sheet Pile into the water up to 3 feet beyond the existing perimeter of the structures, then backfilling the following three areas between the sheet piling and existing pier with the following materials: North Pier – 1600 cubic yards of riprap and 550 cubic yards of aggregate; East Headwall – 700 cubic yards of riprap and 150 cubic yards of aggregate, and South Pier – 2300 cubic yards of riprap and 700 cubic yards of aggregate. In addition, the project will install new utility conduits, concrete caps and curbing, light poles, and fixtures on the expanded piers.

**Decision:**
The MPCA proposes to certify the referenced project and has preliminarily determined that it satisfies the antidegradation standards in Minn. R. 7050.0265. The MPCA has examined the application and other information, including the antidegradation assessment information required under Minn. R. 7050.0285, and bases its preliminary decision on the evaluation of this information and the relevance to water quality considerations. The MPCA finds that there is reasonable assurance that the activity will be conducted in a manner that will not violate applicable water quality standards, provided the following conditions are complied with:

1. **Before any land disturbance at the site, the applicant must ensure that all aquatic resources (wetlands, ditches, lakes, or streams) in the vicinity of the construction area that are not authorized to be impacted by the project are clearly identified.** This may be done through demarcation of those resources on plan sheets or through typical methods of marking boundaries in the field, for example construction staking or the use of silt fences along boundaries.

2. **The USACE must acquire an MPCA National Pollutant Discharge Elimination System Permit (NPDES)/State Disposal System (SDS) General Stormwater Permit for discharging stormwater during this project’s construction activity.** Both the owners and operators of construction activity disturbing one acre or more of land are responsible for obtaining and complying with the conditions of the NPDES/SDS General Stormwater Permit prior to commencing construction activities. A detail Stormwater Pollution Prevention Plan, containing both a temporary and permanent sediment Erosion Control Plan, must be prepared prior to submitting an application for the NPDES/SDS General Stormwater Permit. The following website provides more information: [https://www.pca.state.mn.us/water/construction-stormwater](https://www.pca.state.mn.us/water/construction-stormwater).

3. **Prior to installing the in-water sheet piling construction activities, the USACE, or contractor acting on its behalf, must first install a floating turbidity curtain around all portions of the pier and structures where the in-water sheet piling installation activities will occur.** The turbidity curtain must meet or exceed U.S. Department of Transportation Type II specifications and the skirt must be sized appropriately for the depth of water at the locations where sheet piling will be installed. The turbidity curtain must be installed and maintained in accordance with the manufacturer’s specifications. Further, the turbidity curtain must fully enclose the disturbed area such that turbidity generated within the water column is prevented or limited from leaving the construction area to the greatest extent practicable.
The USACE must visually monitor the area to ensure turbidity impacts are being controlled. If at any time the USACE observes that turbidity from the sheet piling installation activities is not being contained to within the turbidity curtain as required, the USACE must immediately modify the installation activity and take corrective measures to prevent a recurrence. The project’s in-water construction activities must not cause an exceedance of state water quality standards (e.g., the total suspended solids standard of 15 mg/L, the total mercury standard of 1.3 ng/L, or nuisance conditions (Minn. R. 7050.0210. supb.2).

4. The USACE, or contractor(s) acting on its behalf, must only place clean fill that meets Minnesota Department of Transportation Class 1 riprap and Class 5Q aggregate standards to fill in the approximate 3-foot span between the sheet piling and the existing pier structures after the sheet piling has been installed.

5. The USACE must ensure that any dewatering activities necessary to complete this project are discharged to upland areas in full compliance with applicable conditions of the NPDES/SDS Construction Stormwater Permit identified in Condition 2 of this 401 Certification. The dewatering activities must not directly discharge to surface waters or result in a violation of state water quality standards, including Minn. R. 7050.0210. supb.2.

6. The USACE must inform any contractor or subcontractor who will be conducting this project’s construction activities of the need to fully comply with all requirements of this 401 Certification. If the USACE intends to solicit competitive bids for this project’s construction activities, the MPCA advises that language be inserted into the formal bid solicitation process to emphasize that all best management practices (BMPs) identified in this 401 Certification, including the requirement for the turbidity curtain as described in Condition 3, are clearly understood by prospective bidders.

7. The applicant must provide: a) a copy of the 401 Certification; b) documentation of any required BMPs under the above conditions; and c) any written demarcation of waters to any primary contractor responsible for completing the project’s authorized activities. The applicant must also ensure that there is a mechanism in place requiring each primary contractor to provide the same information to all subcontractors, at any level, responsible for fabricating or providing any material for the project or performing work at the project site. In addition, copies of these documents and any other relevant regulatory authorizations related to impacts to waters must be available at or near the project site for use by contractors and staff responsible for completing the project work and must be available within 72 hours when requested by MPCA staff.

8. The applicant must allow representatives from the MPCA to inspect the project site and the authorized activity to ensure that the project is constructed, and BMPs maintained, in accordance with this 401 Certification.

9. This 401 Certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp.3.

10. The applicant must inform the MPCA of any proposed additional water quality impacts this project may have, before they occur, to determine if further review or authorization is required.
This includes any additional dredging, excavation, fill, additional structures, and temporary impacts not shown in the final plans or expressly authorized by this 401 Certification.

This 401 Certification does not release the USACE from obtaining all necessary federal, state, and local permits, nor does it limit more restrictive requirements set forth through any such program. Further, this 401 Certification does not eliminate, waive, or vary the USACE’s obligation to comply with all other laws and state water statutes and rules through the construction, installation, and operation of the project, including, but not limited to, the NPDES/SDS, and Minn. R. ch. 7050 and 7052. This 401 Certification does not release the USACE from any liability, penalty, or duty imposed by Minnesota or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.

This MPCA decision is made, in part, on the USACE’s representations that environmental review under the Minnesota Environmental Quality Board’s Rules, Minn. R. ch. 4410, is not needed for the project or, alternatively, that all necessary environmental reviews and related decisions have been completed. If environmental review for this project is needed and has not been completed, the MPCA does not have legal authority to issue a 401 Certification. In that situation, the MPCA reserves the right to make a 401 Certification decision when the environmental review process is completed.

The MPCA reserves the right to modify or revoke this 401 Certification as provided in Minn. R. 7001.0170 and 33 U.S.C. §1341. Pursuant to Minn. R. 7001.1450 and 33 U.S.C. §1341(a)(3), failure to comply with any of the conditions in this 401 Certification may result in the MPCA invalidating or revoking this 401 Certification. If you have any questions regarding this Certification, please contact Kevin Molloy at 651-757-2577.

Sincerely,

Anna Hotz
Supervisor
Agency Rules Unit
Resource Management and Assistance Division

AH/JB:ds

cc: Kevin Meyer, USACE
    Dan Breneman, MPCA
    James Dexter, MPCA